

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

United States Court of Appeals  
Fifth Circuit

**FILED**

October 19, 2012

Lyle W. Cayce  
Clerk

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No. 11-11185  
Summary Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

JOSE RAMIREZ-MEDINA,

Defendant-Appellant

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 4:11-CR-106-1

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Before SMITH, DeMOSS, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Jose Ramirez-Medina pleaded guilty to one count of illegal reentry following deportation. The district court imposed a sentence of 36 months of imprisonment and one year of supervised release. Ramirez-Medina argues that his sentence is unreasonable because the district court imposed an above-guidelines sentence based on its personal opinion that such a sentence was warranted.

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

## No. 11-11185

The 36-month sentence challenged by Ramirez-Medina was the result of an upward variance from the Guidelines. *See United States v. Brantley*, 537 F.3d 347, 349 (5th Cir. 2008). Following *United States v. Booker*, 543 U.S. 220 (2005), our review of sentences is for reasonableness in light of the sentencing factors set forth in 18 U.S.C. § 3553(a). *United States v. Mares*, 402 F.3d 511, 518-19 (5th Cir. 2005). The Government contends that Ramirez-Medina did not preserve the specific argument he now raises on appeal and that plain error review thus applies. *See United States v. Mondragon-Santiago*, 564 F.3d 357, 361 (5th Cir. 2009). We need not decide the appropriate standard of review because, as explained below, the sentence is reasonable under either plain error review or the abuse-of-discretion standard. *See United States v. Rodriguez*, 523 F.3d 519, 525 (5th Cir. 2008).

The record indicates that the district court properly considered the § 3553(a) factors. The 36-month sentence reflected the seriousness of Ramirez-Medina's offense, the need to promote respect for the law, the need to provide just punishment, and the need to protect the public from future crimes. The sentence imposed "was reasonable under the totality of the relevant statutory factors." *Brantley*, 537 F.3d at 349 (internal quotation marks and citation omitted). Accordingly, the judgment of the district court is AFFIRMED. *See Gall v. United States*, 552 U.S. 38, 51 (2007).